

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Bunner, Bridget E.
)	
Kevin P. BAKER, et al.)	Art Unit: 1647
)	
Application Serial No. 10/015,822)	Confirmation No.: 8184
)	
Filed: December 10, 2001)	Attorney's Docket No. 123851-181898 (GNE-
)	2830-P1C38)
For: PRO1759 POLYPEPTIDES)	
)	Customer No. 77845

FILED VIA EFS - JULY 30, 2008

COMMUNICATION

MAIL STOP APPEAL BRIEF - PATENTS

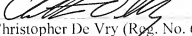
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Examiner's telephone call of July 30, 2008, applicants resubmit the Response to Non-Compliant Appeal Brief in its entirety. Fees were paid at the time of the original submission, June 5, 2008, therefore no fees are due.

Respectfully submitted,

Date: July 30, 2008

By: 
Christopher De Vry (Reg. No. 62,425)

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LIBC/3316715.2

Acknowledgement Receipt

The USPTO has received your submission at **14:33:05** Eastern Time on **05-JUN-2008** by Deposit Account: 071700.

\$ **1050** fee paid by e-File via **RAM** with Confirmation Number: 10402.

eFiled Application Information

EFS ID	3409065
Application Number	10015822
Confirmation Number	8184
Title	PRO1759 POLYPEPTIDES
First Named Inventor	Kevin P. Baker
Customer Number or Correspondence Address	30313
Filed By	Ginger R. Dreger/Arlette Malhas
Attorney Docket Number	GNE.2830P1C38
Filing Date	10-DEC-2001
Receipt Date	05-JUN-2008
Application Type	Utility under 35 USC 111 (a)

Application Details

Submitted Files	Page Count	Document Description	File Size	Warnings
ResponseNonCompliantBrief.pdf	4		119808 bytes	◆ PASS
		Document Description	Page Start	Page End
		Miscellaneous Incoming Letter	1	1
		Supplemental Appeal Brief	2	4
fee-info.pdf	2	Fee Worksheet (PTO-06)	8131 bytes	◆ PASS

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National Stage of an International Application under 35 U.S.C. 371

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New International Application Filed with the USPTO as a Receiving Office

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If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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TRANSMITTAL FORM

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Total Number of Pages in This Submission

Application Number	10/015,822
Filing Date	December 10, 2001
First Named Inventor	Baker et al.
Group/Art Unit	1647
Examiner Name	Bunner, Bridget E.
Attorney Docket Number	GNE-2830-P1C38

ENCLOSURES (check all that apply)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☐ Amendment / Response
- ☐ After Final
- ☐ Version With Markings Showing Changes
- ☐ Affidavits/declaration(s)
- ☒ Extension of Time Request - 3 months
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ incomplete Application
- ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Copy of Notice


- ☐ Copy of Assignment
- ☐ Amendment Under 37 CFR §1.48(b)
- ☐ Licensing-related Papers
- ☐ Petition Routing Slip (PTO/SB/69) and Accompanying Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, by Assignee to Exclusion of Inventor Under 37 C.F.R. §3.71 With Revocation of Prior Powers
- ☐ Terminal Disclaimer
- ☐ Small Entity Statement
- ☐ Request for Refund

- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☒ **APPEAL COMMUNICATION TO GROUP (APPEAL NOTICE, BRIEF, REPLY BRIEF)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☐ Additional Enclosure(s) (Please Identify Below)

Remarks

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT 07-1700 FOR ANY FEES DUE IN CONNECTION WITH THIS PAPER, REFERENCING ATTORNEY'S DOCKET NO. 123851-181898 (GNE-2830-P1C38).

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual name	GOODWIN PROCTER LLP	CHRISTOPHER DE VRY (Reg. No. 61,425)
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Signature		
Date	JUNE 5, 2008	Customer Number: 77845

FILED VIA EFS - ON JUNE 5, 2008

BY: ARLETTE MALHAS

1-118K/3316887-1

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For: PRO1759 POLYPEPTIDES)	
)	Customer No. 77845

Filed Via EFS: June 5, 2008

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

On April 12, 2007, the Examiner made a final rejection to pending Claims 28-35 and 38-40. A Response to Final Office Action was filed on August 13, 2007. A Notice of Appeal was subsequently filed on September 11, 2007. An Advisory Action was mailed on November 13, 2007. An Appeal Brief was filed on January 10, 2008.

A Notification of Non-Compliant Appeal Brief was mailed February 5, 2008, which stated that the Appeal Brief did not fit with the criteria of 37 C.F.R. §41.37(c)(1)(v)). Specifically, the notification asserted that, in Section 5, the "summary of the claimed subject matter does not map the independent claim on appeal, to the specification by page and line numbers and to the drawings, if any (claim 28)." The following amended Appeal Brief has been corrected to more clearly reference the claims and identify line numbers where appropriate in the Summary of Claimed Subject Matter (Section 5), as requested by the PTO.

To reduce expense and duplication, Appellants hereby resubmit only Section 5 of the Appeal Brief. The Board is requested to refer to the Appeal Brief submitted in its entirety dated January 10, 2008. This response to Non-Compliant Brief is timely filed, with a request for a three month extension of time and the necessary fees.

AMENDMENT TO THE BRIEF

5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in the present application is related to an isolated polypeptide comprising the amino acid sequence of the polypeptide of SEQ ID NO:374 (Claims 33(a) and 34); the amino acid sequence of the polypeptide of SEQ ID NO:374, lacking its associated signal peptide (Claims 33(b) and 35); or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 203465 (Claims 33-35(c) and 38). The polypeptide of SEQ ID NO:374 is designated PRO1759, and its amino acid sequence is shown in Figure 218, while the encoding nucleic acid sequence (SEQ ID NO:373) is shown in Figure 217. PRO1759 is described as a novel protein having multiple transmembrane domains (see, for example, page 31, lines 21-25; page 250, lines 20-22). The isolation of cDNA clones encoding PRO1759 of SEQ ID NO:374 is described in Example 112. The invention is further directed to polypeptides having at least 80% (Claim 28), 85% (Claim 29), 90% (Claim 30), 95% (Claim 31), or 99% (Claim 32) amino acid sequence identity to the amino acid sequence of the polypeptide of SEQ ID NO:374; the amino acid sequence of the polypeptide of SEQ ID NO:374, lacking its associated signal peptide; or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 203465, wherein the nucleic acid encoding said polypeptide is amplified in lung or colon tumors (Claims 28-32). The invention is further directed to a chimeric polypeptide comprising one of the above polypeptides fused to a heterologous polypeptide (Claim 39), and to a chimeric polypeptide wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin (Claim 40).

The full-length PRO1759 polypeptide having the amino acid sequence of SEQ ID NO:374 is described in the specification at, for example, page 17, lines 20-25, page 344, lines 12-17, Example 64, in Figure 122 and in SEQ ID NO:374. The cDNA nucleic acid encoding PRO1759 is described in the specification in Figure 217 and in SEQ ID NO:373. Page 292, lines 14-18 of the specification provides the description for Figures 121 and 122. PRO polypeptide variants having at least about 80% amino acid sequence identity with a full length PRO polypeptide sequence or a PRO polypeptide sequence lacking the signal peptide are

described in the specification at, for example, page 302, lines 4-26. The preparation of chimeric PRO polypeptides, including those wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin, is set forth in the specification at page 358, lines 11-34. Examples 128-131 describe the expression of PRO polypeptides in various host cells, including *E. coli*, mammalian cells, yeast and Baculovirus-infected insect cells. Finally, Example 143, in the specification at page 494, line 20, to page 508, line 28, sets forth a Gene Amplification assay which shows that the PRO1759 gene is amplified in the genome of certain human lung or colon cancers (Table 8).

The specification discloses that antibodies to PRO polypeptides may be used, for example, in purification of PRO (page 380, lines 15-21 and Example 133), in diagnostic assays for PRO expression (page 363, line 31, to page 364, line 3, and page 380, lines 2-13), as antagonists to PRO (page 371, lines 27-30), and as elements of pharmaceutical compositions for the treatment of various disorders (page 379, lines 1-37).

CONCLUSION

For the reasons given above, Appellants submit that the Appeal Brief submitted with regards to the instant application meets the requirements of 37 C.F.R. §41.37(c)(1)(v)).

Accordingly, Appellants hereby request consideration by the Board of Patent Appeals and Interferences.

Please charge any additional fees, including fees for additional extension of time, or credit overpayment to Deposit Account No. 07-1700 (referencing Attorney's Docket

No. 123851-181898 (GNE-2830-PIC38).

Respectfully submitted,

Date: June 5, 2008

By: 
Christopher De Vry (Reg. No. 62,425)

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